

DOCKET FILE COPY ORIGINAL
GARDNER, CARTON & DOUGLAS

1301 K STREET, N.W.

SUITE 900, EAST TOWER

WRITER'S DIRECT DIAL NUMBER

WASHINGTON, D.C. 20005

Thomas J. Dougherty, Jr.
202/408-7164
tdougherty@gcd.com

(202) 408-7100
FAX: (202) 289-1504
INTERNET: gcdlawdc@gcd.com

ORIGINAL

CHICAGO, ILLINOIS

MEMBER
WORLD LAW GROUP
A GLOBAL NETWORK
OF INDEPENDENT
FIRMS LOCATED IN
30 COUNTRIES

June 20, 2002

Via Hand Delivery

RECEIVED

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

JUN 20 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

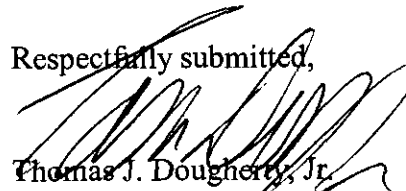
Re: MEDIA BUREAU, VIDEO SERVICES DIVISION
Ref. No. 2-A726
Petition for Reconsideration of Dismissal of
Joint Petition for Rule Making to Change the Television
Table of Allotments (Digital and NTSC) for Fairmont, WV

Dear Ms. Dortch:

Transmitted herewith, on behalf of Davis Television Fairmont, LLC and Marri Broadcasting, L.P., are an original and four copies of the above-referenced petition for reconsideration.

Please contact the undersigned if you having any questions concerning this petition.

Respectfully submitted,



Thomas J. Dougherty, Jr.
Counsel for Marri Broadcasting, L.P.

cc (w/encl.): Dennis P. Corbett, Esq.

No. of Copies rec'd
List ABCDE

074

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUN 20 2002

In the Matter of:

Amendment of Section 73.606(b)
Television Table of Allotments
(Fairmont, West Virginia)

Amendment of Section 73.622(b)
Television Table of Allotments
(Fairmont, West Virginia)

RE _____
Facility ID No. 127324

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: CHIEF, MEDIA BUREAU

PETITION FOR RECONSIDERATION

Davis Television Fairmont, LLC and Marri Broadcasting, L.P. (the "Petitioners"), by counsel and pursuant to Section 1.429 of the Commission's Rules, hereby request that the Media Bureau (the "Bureau") reconsider the dismissal of the Petitioner's Petition for Rulemaking, as amended, in the above-captioned proceeding. That action was taken in a May 21, 2002 letter to undersigned counsel from Mr. Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau (the "Dismissal Letter"), a copy of which is attached to this pleading as Exhibit A. In support of this request, the following is respectfully submitted:

I. Background

The Petitioners are the only mutually exclusive applicants for a construction permit for a new television station at Fairmont, West Virginia. Originally, each Petitioner filed for NTSC Channel 66, which was allocated to Fairmont, WV pursuant to Section 73.606 of the Commission's Rules. Thereafter, the Petitioners entered into a settlement agreement for the

termination of such mutual-exclusivity. Due to the reallocation of channels 60-69 for flexible uses, the Petitioners could not continue to seek a permit for Channel 66, but were required to locate an available Channel below that band. The Petitioners commissioned an engineering study which showed that Channel 55 could be allocated at Fairmont, WV and filed a Petition for Rule Making to amend Section 73.606 of the Commission's Rules to substitute NTSC Channel 55 for NTSC Channel 66. Subsequently, the Commission reallocated Channels 52-59 for new flexible uses in General Docket No. 01-74 again requiring the Petitioners to find an alternative Channel if they hoped to license a TV station at Fairmont, WV. Marri commissioned an engineering study, but was unable to find an acceptable NTSC Channel for Fairmont, WV. This study did determine, however, that a Channel 55 facility operating with digital emissions could be allocated to Fairmont, WV consistent with allocation criteria for digital television, and the Petitioners amended their Petition for Rule Making on March 8, 2002 to propose this allocation.

The Dismissal Letter states that the Petition for Rule Making, as so amended, is dismissed because the Bureau's independent review of the Channel 55 DTV proposal shows that the proposed station "would cause 2.6 percent interference to a DTV construction permit, File No. BPEDT-20000501AGI filed by WGPT-DT, Oakland, MD." This construction permit authorizes DTV operation on first adjacent Channel 54.

II. Discussion

Petitioners' March 8, 2002 amendment to their Petition for Rule Making studied the Channel 54 permit of WGPT-DT, and determined that interference to this first adjacent channel station would be less than 2 percent.¹ The Engineering Statement of Kevin T. Fisher, attached hereto as Exhibit B revisits that determination and concludes that the Petitioner's proposal for Channel 55 satisfies the 2 percent requirement.

According to Mr. Fisher, the interference caused to the WGPT-TV allocation is no more than 1.5 percent. Mr. Fisher explains that this value was derived by using a program that studies interference within 1 kilometer cells, rather than within 2 kilometer cells. The use of 1 kilometer cells for this purpose is contemplated by OET Bulletin No. 69, which states that “[e]valuations using cells smaller than 2 km on a side are also expected to be consistent with the evaluations given in Appendix B of the *Sixth Report and Order*.”² Accordingly, the Petitioners’ proposed allocation meets the requirements of Section 73.623(c)(2) of the Commission’s Rules.

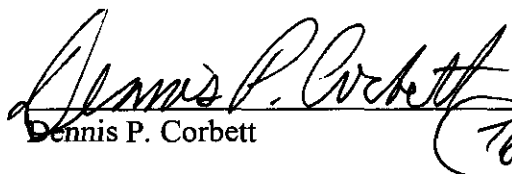
Mr. Fisher continues to explain that the percentage of true interference is even less, when pre-existing interference from other stations is considered. This “masking” reduces the percentage of interference caused by the Petitioners’ proposal to 0.7 percent.

III. Conclusion

Therefore, for the reasons set forth above, the Bureau should reconsider the Dismissal Letter and promptly process the Petitioners’ Petition for Rule Making, as amended.

Respectfully submitted,

DAVIS TELEVISION FAIRMONT, LLC

By: 
Dennis P. Corbett

Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809
202-429-8970

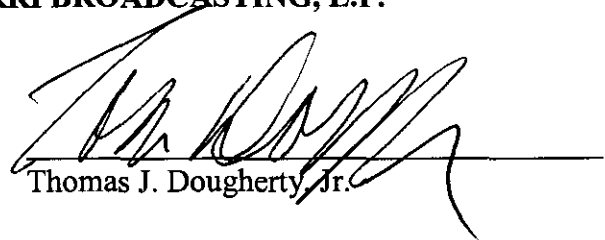
Its Attorneys

¹ Engineering Statement, at 2.

² OET Bulletin No. 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, at 9.

MARRI BROADCASTING, L.P.

By:



Thomas J. Dougherty, Jr.

Gardner, Carton & Douglas
1301 K Street, N.W., Suite 900 East
Washington, D.C. 20005
(202) 408-7100
(202) 289-1504

Its Attorneys

June 20, 2002

EXHIBIT A

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

MAY 21 2002

IN REPLY REFER TO:
2-A726

Dennis P. Corbett
Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, DC 20006-1809

Thomas J. Doughery, Jr.
Gardner, Carton & Douglas
1301 K Street, N.W., Suite 900 East
Washington, DC 20005

Re: Petition for Rulemaking
Facility ID No. 127324
Fairmont, WV

Dear Counsel:

This is with respect to the Petition for Rulemaking, as amended, filed by Davis Television Fairmont, LLC and Marri Broadcasting, L.P. (the "Petitioners"), requesting the Commission to institute a rulemaking proceeding for the purpose of amending the TV and DTV Table of Allotments to substitute DTV Channel 55 for the existing NTSC Channel 66 at Fairmont, West Virginia. Our independent engineering review of your proposal indicates that it fails to meet the interference requirements of Section 73.623 of the Commission's Rule. The proposal would cause 2.6 percent interference to a DTV construction permit, File No. BPEDT-20000501AGI filed by station WGPT-DT, Oakland, MD.

In the Commission's Public Notice released February 6, 2002, DA 0-270, it announced a window filing opportunity to allow applicants and petitioners with certain pending requests for new analog (NTSC) television station on channels 52-59 to modify their proposals to specify operation as a DTV station or to amend their applications to specify a "core" channel for NTSC operation. That window closed on March 8, 2002. Although Petitioners did file an amendment during the window period to specify DTV operations on Channel 55, the proposal as amended still causes interference as noted above. Thus, the petition is defective and must be dismissed. Accordingly, the Petition for Rulemaking IS HEREBY DISMISSED.

Sincerely,



Clay C. Pendarvis
Associate Chief
Video Division
Media Bureau

EXHIBIT B

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of DAVIS TELEVISION FAIRMONT, LLC and MARRI BROADCASTING, L.P., petitioners for the substitution of DTV Channel 55 for NTSC Channel 66 in Fairmont, West Virginia, in support of its Petition for Reconsideration of the FCC's dismissal of its proposal.

On May 21, 2002, the Commission dismissed the aforementioned proposal due to predicted interference to WGPT-DT, Channel 54 in Oakland, Maryland (as authorized under BPEDT-20000501AGI). According to the FCC, the proposed operation of DTV Channel 55 in Fairmont would cause interference to 2.6 percent of the Longley-Rice-based service population of WGPT-DT.

We re-ran our Longley-Rice interference study with respect to WGPT-DT and the impact of the Fairmont DTV proposal thereon. We utilized the V-Soft Communications Probe II software, which is based on the methodology contained in the Commission's OET Bulletin No. 65. The study looked at coverage and interference within 1-square kilometer cells and determined signal levels every 0.1 kilometer along each azimuth considered. In addition, the program employs the 2000 U.S. Census to determine population within each cell. Individual cells were considered to be interference-free if the signal level of WGPT-DT is equal or greater than 41 dBu and the interfering signal from the proposed Fairmont facility does not exceed the appropriate d/u ratio for first-adjacent-channel DTV stations. In cells where interference from another station was predicted to occur (before the introduction of the Fairmont proposal), the population of those cells was not attributed to interference from Channel 55 in Fairmont. This is known as "masking".

Stations which mask interference from the Fairmont proposal are: WNUV(TV), Channel 54 in Baltimore, Maryland; WHAG-DT (as authorized in BPCDT-19991101ACZ), Channel 55 in Hagerstown, Maryland; WQLN(TV), Channel 54 in Erie, Pennsylvania; and, WOWK-DT (as allotted), Channel 54 in Huntington, West Virginia. Without the masking sources, the Fairmont proposal causes interference to 1.5 percent of the WGPT-DT service population. However, when the masking sources are included, the Fairmont Channel 55 facility causes only 0.7 percent interference to WGPT-DT.

Therefore, the DTV proposal on Channel 55 in Fairmont, West Virginia, meets the *de minimis* interference requirements of Section 73.623 of the Commission's Rules with respect to WGPT-DT and, as a result, the Petition for Rulemaking should be reinstated.

I declare, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge and belief.



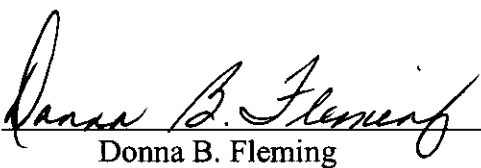
KEVIN T. FISHER

June 18, 2002

CERTIFICATE OF SERVICE

I, Donna B. Fleming, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 20th day of June, 2002 caused a copy of the foregoing "**PETITION FOR RECONSIDERATION**" to be either hand delivered to the following:

Ms. Pamela Blumenthal
Video Services Division
Mass Media Bureau
445 12th Street, S.W – Suite 2-A762
Washington, D.C. 20554

By: 
Donna B. Fleming

DC01/380355.1